



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Jarrett S. Blankenship

File: B-239673; B-239844

Date: August 16, 1990

Jarrett S. Blankenship, for the protester.
Col. Herman A. Peguese, Department of the Air Force, for the agency.
Maria E. Schwartz, and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Solicitations for the delivery, but not installation, of air-cooling chiller systems will result in supply contracts, so that under applicable regulations a small disadvantaged business (SDB) must furnish a product manufactured by a SDB or, if there is no SDB manufacturer, the product of a small business in order to be eligible for an SDB evaluation preference.

DECISION

Jarrett S. Blankenship, a small disadvantaged business (SDB) regular dealer, protests the award of two contracts by the Department of the Air Force. One was awarded under request for proposals (RFP) No. F16602-90-R-0012 and the other under invitation for bids (IFB) No. F29605-90-B-0007. Both were for air-cooling chiller systems. The protester contends in both cases that the Air Force improperly deprived it of an SDB evaluation preference which would have rendered it low.

We deny the protests.

The facts surrounding these protests are similar. Under both solicitations, the protester certified that it was an SDB regular dealer offering chillers manufactured by Carrier, Inc., a large business. The current Department of Defense Federal Acquisition Regulation Supplement (DFARS) provides that in supply contracts SDBs competing as regular dealers may get the benefit of an evaluation preference only if they furnish the product of a SDB manufacturer, or, if

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there are no SDB manufacturers, the product of a small business manufacturer. DFARS § 252.219-7007(c)(2) (DAC 88-11). In both instances, since Blankenship offered to supply an item manufactured by a large business, the agency did not apply the SDB preference.

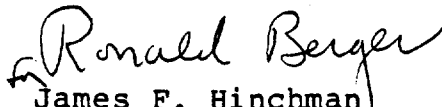
The protester argues that the SDB evaluation preference should have applied to it under both solicitations because the contracts to be awarded were either for services or construction.

We disagree. Both solicitations called only for delivery of the chiller units, not their installation. Neither solicitation called for the construction, alteration, or repair of a building or other facility, nor did either call for the contractor to directly engage its time or effort to perform an identifiable task rather than to furnish an item of supply. Therefore, under the applicable regulations pertaining to construction, Federal Acquisition Regulation (FAR) § 36.102, and to services, FAR § 37.101, the solicitations can not be viewed as either for construction or services. Accordingly, we find that the agency properly viewed the procurements as ones for supplies and properly denied Blankenship the SDB preference. See DFARS § 252.219-7007; Baszile Metals Serv., B-237925; B-238769, Apr. 10, 1990, 90-1 CPD ¶ 378.

Blankenship also argues that its eligibility for the SDB preference should have been determined pursuant to an earlier version of the applicable regulation, DFARS § 252.219-7007 (DAC 88-2), under which the preference would apply to the protester even if the item to be furnished pursuant to a supply contract was manufactured by a large business. The protester does not supply a rationale for its argument that a regulation superseded in 1989, see DAC 88-11, should apply to solicitations issued in March and April of 1990, and we are aware of no reason why that should be so.

We therefore find that the Air Force acted properly in not applying the preference in favor of Blankenship under both solicitations.

The protests are denied.


James F. Hinchman
General Counsel